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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,260

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Sidney M. Weiser

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/626,260	Applicant(s) WEISER ET AL.	
	Examiner Ula C. Ruddock	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 18-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 18-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/26/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 26, 2007, has been entered.
2. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed October 26, 2007.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1, 3-9, and 18-26 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. 11/297022. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

5. Claims 1, 3-9, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bohannon, Jr. (US 6,855,650) in view of Lancaster (US 5,849,645) and Martin et al. (US 5,972,463). Bohannon, Jr. discloses a synthetic fiber filled erosion control blanket. The netting and loose fiber filler construction permits blankets or mats of this kind to be fairly light in weight and also to permit the ingrowth of grasses and other vegetation into and through the blanket. The netting primarily serves to hold the loose fiber filler together (col 1, ln 56-61). It should be noted that the Examiner is equating the fiber filler of Bohannon, Jr. to the nonwoven mat of the present invention. The top and bottom sheets generally resemble an open-mesh material or netting and the filler material for use in the erosion control blanket is made up of a plurality of crimped polymer fibers which form a three-dimensional matrix between the top sheet and the bottom sheet. The filler material can be made of polyethylene terephthalate (col 2, ln 44-57). The netting is formed of polyethylene, polypropylene, or other suitable polyolefin (col 3, ln 56-59). The PET fibers of the fiber filler have a denier size of about 15-500 (col 5, ln 1-2) and a length of 5.75-6.25 inches (col 6, ln 61-64). The top and bottom sheets are stitched together (col 6, ln 61-62). Bohannon, Jr.

discloses the claimed invention except for the teaching that the layers are stitched with a polymer yarn and that the mat comprises multi-dimensional polymer fibers.

Martin et al. (US 5,972,463) disclose a web that is used as erosion control or civil engineering matting for retaining soil on embankments, dikes, and slopes and the like to protect them from erosion (col 7, ln 3-5). The multicomponent filaments of this invention can be circular or round in cross section or non-circular or odd in cross section, e.g., lobal, elliptical, rectangular, and triangular (col 5, ln 7-27). More specifically, the cross sections can be trilobal (col 13, ln 64-66). As seen in Figure 14 of Martin et al., the fibers have at least three substantially concave and smoothly curved channels separating at least three substantially convex and smoothly curved lobes, as now required by the present invention. It should be noted that the trilobal fibers of Martin et al. in Figure 14 appear to be structurally similar to the trilobal fibers of the present invention, shown in Figure 3.

Lancaster (US 5,849,645) discloses a reinforced composite matting used for environmental soil erosion control (col 6, ln 28-29). The composite matting includes a bottom netting, fiber matrix, top netting that are secured together by stitching strands made of polyester black thread, thereby sandwiching and trapping the fiber matrix materials there between (col 5, ln 22-32).

It would have been obvious to have used the tri-lobal or multi-lobal fibers of Martin et al. and the polyester stitching thread of Lancaster in the erosion control blanket of Bohannon, Jr., motivated by the desire to create an erosion control blanket that has increased erosion controlling properties, increased soil-cohesion, and increased structural integrity.

Regarding Applicant's newly added limitations in independent claims 1 and 18, it is the Examiner's position that although the combination of Bohannon, Jr., Martin et al., and Lancaster fail to disclose the specific fibrous structure set forth in the claims, it would have been obvious to one having ordinary skill in the erosion control art to have made a fiber having the claimed specific fibrous structure, motivated by the desire to create an erosion control mat with increased moisture transport ability.

Rejection is maintained.

Response to Arguments

6. Applicant's arguments filed October 26, 2007, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that the combination of Bohannon, Jr., Martin et al., and Lancaster fail to disclose the newly added structural limitations set forth in the independent claims. As set forth above, it is the Examiner's position that it would have been obvious to one having ordinary skill in the erosion control art to have made a fiber having the claimed specific fibrous structure, motivated by the desire to create an erosion control material with increased moisture transport ability. Furthermore, it should be noted that Applicant must distinctly and specifically point out errors in the Examiner's action (Rule 37 CFR 1.111 (b)). Also, it should be noted that Applicant cannot show non-obviousness by attacking references individually where, as here, the rejections are based on a combination of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/U. C. R./

/Ula C Ruddock/
Primary Examiner, Art Unit 1794